

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RYAN ALLEN ROBERTSON,

Defendant-Appellant.

UNPUBLISHED

August 9, 2005

No. 251879

Wayne Circuit Court

LC No. 03-007965-01

Before: White, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of third-degree criminal sexual conduct (CSC III), MCL 750.520d(1)(a), and fourth-degree criminal sexual conduct (CSC IV), MCL 750.520e(1)(a). Defendant was sentenced to fifty-one months to fifteen years in prison for his CSC III conviction, and one to two years in prison for his CSC IV conviction. We affirm.

Defendant argues that there was insufficient evidence to find him guilty beyond a reasonable doubt of CSC III and CSC IV. We disagree.

We review a challenge to the sufficiency of the evidence *de novo* to determine if, when reviewed in the light most favorable to the prosecutor, the evidence could lead a rational trier of fact to conclude that all the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). The “standard of review is deferential, and requires a reviewing court to draw all reasonable inferences and resolve credibility conflicts in support of the verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant was convicted of CSC III on a theory that he digitally penetrated the victim while the victim was aged fourteen or fifteen. A person is guilty of the offense of CSC III if the person engages in sexual penetration with another person and that other person is at least thirteen years of age and under sixteen years of age. MCL 750.520d(1)(a); *In Re Hawley*, 238 Mich App 509, 512; 606 NW2d 50 (1999). “Sexual penetration” is defined as “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body” MCL 750.520a(m). Any penetration or intrusion, no matter how slight, is sufficient to satisfy the “penetration” element of third-degree criminal sexual conduct. MCL 750.520d; MCL 750.520a(l); *People v Hunt*, 442 Mich 359, 364; 501 NW2d 151 (1993).

Here, it is undisputed that the victim was between the ages of thirteen and sixteen at the time of the incident. The “sexual penetration” element was established by the victim’s testimony that defendant inserted his fingers into her vagina. Thus, there is sufficient evidence to support defendant’s conviction of CSC III.

Defendant was also convicted of CSC IV. A person is guilty of CSC IV if he engages in sexual contact with another person, and that other person is at least thirteen years of age but less than sixteen years of age, and the actor is five or more years older than that other person, MCL 750.520e(1)(a). MCL 750.520a(n) provides that "sexual contact" includes "the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification." See *People v Piper*, 223 Mich App 642, 647; 567 NW2d 483 (1997).

The evidence was sufficient to support defendant’s conviction of CSC IV. The “sexual contact” element was established by the victim’s testimony that defendant touched and squeezed her breasts while trying to convince her to have sex with him. Further, it is undisputed that defendant is more than five years older than the victim.

Although defense counsel attempted to impeach the prosecution’s witnesses to some extent and set forth evidence indicating that the prosecution’s witnesses might have been prejudiced against defendant, such considerations go to the witnesses’ credibility. It is fundamental that witness credibility is a matter of weight, not sufficiency, of the evidence. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). The trial judge, as trier of fact, has the duty to weigh the testimony and assess the credibility of the witnesses. *People v Snell*, 118 Mich App 750, 755; 325 NW2d 563 (1982). This Court will not substitute its judgment for that of the trial court but will defer to the trial court's resolution of factual issues that involve the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993). The trial court gave a thorough and rational explanation for accepting the victim's testimony. That explanation was based on the evidence introduced at trial, and thus, was not clearly erroneous. The fact that the trial court chose to believe the victim despite defense counsel's attempts to impeach her does not constitute error requiring reversal. *Snell, supra* at 756.

Affirmed.

/s/ Helene N. White
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder